1984

The State of Utah v. Steven v. Singleton : Brief of Appellant

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH :

Plaintiff/Respondent :

-v- :

~~CALVIN GEORGE SMITH, JR.~~ Stevens Saudelton : Case No. ~~19105~~ 19107

Defendant/Appellant :

BRIEF OF APPELLANT

Appeal from a jury verdict of guilty of Aggravated Burglary, a Felony in the First Degree, Aggravated Robbery, a Felony in the First Degree, and Theft, a Felony in the Second Degree, in the Third Judicial District Court in and for Salt Lake County, state of Utah, the Honorable Dean E. Conder presiding.

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TABLE OF CONTENTS

CASES CITED

Table of Contents

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Plaintiff/Respondent	:	
-v-	:	
STEVEN V. SINGLETON	:	Case No. 19107
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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Appellant, STEVEN V. SINGLETON, appeals from his conviction of Theft, a Third Degree felony in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge presiding.

DISPOSITION IN THE LOWER COURT

Following trial by jury, the Court entered judgment of guilty of Count II of the Information, Theft, a Third Degree Felony and not guilty of Count I of the Information, Burglary, a Second Degree Felony. Defendant was ordered committed to the Utah State Prison for the indeterminate term not to exceed five years and was fined Five Hundred ($500) Dollars. Defendant was granted a stay of execution of the above sentence and was placed on probation for a period of three years under the supervision of Adult Probation and Parole.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the lower court's conviction reversed and to have the case remanded to the Third District Court for a new trial or have the matter dismissed.

STATEMENT OF THE FACTS

On November 11, 1981, at about 7:15 p.m., witness Bailey was turning into her driveway when out of the corner of her eye, she saw movement west of her in an adjacent field. (T. 30). As she proceeded into the driveway, her lights flashed on a person who walked past her car. (T. 37). Her lights also hit on something shiney in the field. (T. 40). Bailey continued to watch the individual from her rearview mirror and when she was sure he wasn't around, she went into the area of the field where she had seen the object shine and found a stereo. (T. 41). She then returned to her apartment and called the police. (T. 41).

When the police arrived, they discovered a residence at 365 North Main had been burglarized. (T. 90). Besides the stereo equipment discovered by Bailey, a thirty-five millimeter camera, hard case, and telephoto lens had been taken from the residence. (T. 27). The camera equipment was never found.

Bailey told the investigating officer that the individual she had seen was male white in his 20's, about five foot eight or ten, medium build, wearing a blue and white baseball cap, a blue jacket, and levis. (T. 93). The investigating officer called two motor officers in the area and gave them the description.

Sometime around 9:00 p.m. (T. 42) the motor officers saw the appellant at about 603 North 200 West wearing levis, a blue nylon jacket and a blue and white baseball cap. (T. 123).

After asking for and receiving Appellant's identification, (T. 128) the motor officers took Appellant to the Bailey residence for a "show up". The officers took the hand-cuffed Appellant across the street to stand under a street light, and from her porch steps Bailey identified him as the individual she had seen earlier in the evening. (T. 78-82).

While en-route to the jail, Appellant stated to the transporting officer "I guess she saw me with the stereo equipment, too?".

ARGUMENT

POINT I

PROSECUTOR'S SOLICITATION OF TESTIMONY FROM POLICE OFFICER AS TO APPELLANT'S SILENCE AFTER RECEIVING THE MIRANDA WARNING VIOLATES APPELLANT'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION AND FOURTEENTH AMENDMENT DUE PROCESS RIGHTS.

During trial, counsel for the State called Douglas Maack, a Salt Lake City Police officer to the stand. The prosecutor then elicited the following testimony: (T. 97-100).

> Q. After she made her identification of the individual, what did you do?
>
> A. I placed the individual back in my car and read him his rights.
>
> Q. What rights did you read?
>
> A: Miranda.
>
> Q. Did you read that from a card, or personally, or what?

A. From a card.

Q. Did he indicate that he understood his rights?

A. Yes sir, he did.

Q. For the record, do you have the card with you?

A. No, sir, I don't.

Q. Can you remember what the card said, what the rights are that you gave?

A. I always read it directly from a card.

Q. Is that a standard-practice procedure card?

A. Yes, sir, it is.

Q. After reading that, did you ask him if he understood his rights?

A. Yes, sir, I did.

Q. Did he respond?

A. Yes, sir.

Q. What did he say?

A. I can describe the card a little bit. Miranda is on the one side, and you turn it over and on the other side it asks if those are -- if they completely understand the Miranda that they have been given and if they wish to make a statement or talk to an attorney.

Q. Did he respond to that question?

A. He responded to both.

Q. What did he say?

A. He said he understood his rights and he said he really didn't have anything to say.

MR. EBERT: Your Honor, I object and I reserve a motion.

THE COURT: The objection is overruled.

MR. EBERT: Your Honor, I would ask to argue this right now.

THE COURT: You may proceed.

MR. EBERT: Your Honor, I would like to argue it outside the presence of the jury.

THE COURT: You will have an opportunity to do that.

You may proceed with your questioning.

MR. GUNNARSON: Thank you.

Q. (By Mr. Gunnarson) Did he indicate he didn't want to talk to you?

A. At that time he did, yes.

Q. What exactly did he say?

A. Something to the effect that he didn't have anything to say.

Q. Did he say he had nothing to say, or that he didn't want to talk to you?

A. Just that he didn't have anything to say.

Appellant maintains that allowing testimony relating to the Appellant's exercise of his Constitutional right to remain silent was improper and prejudicial to the jury. Such improper conduct on the part of the State should entitle the Appellant to a new trial before a jury untainted by such prejudicial information.

An accused in a criminal trial has the privilege against self-incrimination guaranteed by the Fifth Amendment. The privilege is safeguarded in a police custodial interrogation by the mandate of Miranda v. Arizona, 384 U.S. 431 (1966). The accused, in

exercise of the right against self-incrimination, may remain silent and refuse to talk to police. An accused's silence may not later be used against him as evidence of his guilt. Id. at 384 U.S. 468, fn. 37. The United States Supreme Court has extended this principle to include questioning and comment on a defendant's failure to make a statement upon arrest, after Miranda warnings have been given. Doyle v. Ohio, 426 U.S. 619 (1976).

The policies to be served by a rule against prosecutorial comment on the accused's exercise of his right to remain silent have been recognized by the Utah Supreme Court. In State v. Wiswell, 639 P.2d 146 (1981), this Court reversed the defendant's conviction on the basis that the prosecution attempted, more than once, to put the defendant's post-arrest silence before the jury. This court stated that references to Wiswell's post-arrest silence were "fundamental error which could have affected the result and [were] therefore prejudicial."

In the present case, counsel objected to testimony that appellant remained silent after Miranda warnings. The objection was overruled and a subsequent defense motion for a mistrial was denied. By overruling counsel's objection, the trial court may have given the jury the impression that they could lawfully infer guilt from the Appellant's exercise of his Fifth Amendment privilege.

Further, testimony that the Appellant "had nothing to say" to police after Miranda was of no relevance or probative value to the substance of the State's case. The only possible purpose of allowing such testimony to reach the jury was to prejudice the accused and infer his guilt. cf. State v. Urias, 609 P.2d 1326 (Utah 1980).

POINT II

THE EVIDENCE PRESENTED BY THE STATE WAS INSUFFICIENT TO ESTABLISH THE GUILT OF THE APPELLANT BEYOND A REASONABLE DOUBT.

It is well settled that a reviewing court has the authority to review a conviction based upon sufficiency of the evidence. The standard for review was clearly stated in State v. Wilson, 565 P.2d 66 (1977):

> In order for the defendant to successfully challenge and overturn a verdict on the ground of insufficiency of the evidence, it must appear that upon so viewing the evidence, reasonable minds must necessarily entertain a reasonable doubt that the defendant committed the crime. 565 P.2d 68, See Also State v. Forte, 572 P.2d 1387.

In State v. Mills, 530 P.2d 1272 (1975), this court also addressed when sufficiency of the evidence must be challenged:

> For a defendant to prevail upon a challenge to the sufficiency of the evidence to sustain his conviction, it must appear that viewing the evidence and all inferences that may reasonably be drawn therefrom, in the light most favorable to the verdict of the jury, reasonable minds could not believe him guilty beyond a reasonable doubt. 530 P.2d at 1272.

In the present case, Appellant maintains the evidence presented by the State was insufficient to support a verdict of guilt of Theft beyond a reasonable doubt.

The identification of Appellant as the man Bailey saw next to stereo equipment in the field was based upon a 15 to 20 second observation which occurred at night. (T. 59).

The description Bailey gave to the police was a general one which presumably could have fit a number of young men on the streets in November; male in his 20's, dressed in levis and levi jacket with a blue and white baseball cap. (T. 93). Further, Bailey's identification of Appellant nearly two hours later occurs while the accused was in police custody, handcuffed and with the illumination of only a street light. (T. 78-82). Such circumstances should have created doubt that Bailey's identification was a valid one.

Even if the jury could have believed beyond a reasonable doubt that Appellant was the individual Bailey saw next to the property in the field, the State presented no evidence that Appellant was the individual who had stolen the property. The mere presence of an individual at the scene of a crime, should not be sufficient to establish guilt beyond a reasonable doubt.

That the jury split its verdict and found appellant not guilty of the Burglary but guilty of the Theft cannot be overlooked. There was no evidence that the Appellant had the requisite intent to commit a theft, unless the jury believed not only that

Appellant was the man Bailey saw near the stereo equipment, but that Appellant was also the burglar who had taken the property from the victim residence. The jury's acquittal of the underlying burglary charge indicates the probability that the jury was not satisfied beyond a reasonable doubt of the accused's guilt and instead of acquitting, split the verdict.

Appellant respectfully submits that the State failed to establish his guilt of the crime of Theft beyond a reasonable doubt and asks that his conviction be reversed.

CONCLUSION

The trial court committed reversible error in allowing Appellant's post-arrest silence to be brought into evidence. Further, evidence presented by the State was insufficient to establish the Appellant's guilt of Theft beyond a reasonable doubt.

For these reasons, Appellant respectfully requests his conviction be reversed.

DATED this 12 day of April, 1984.

Respectfully submitted,

LISA A. MAXFIELD
Attorney for Appellant

DELIVERED two copies of the foregoing to the Attorney General's Office, 236 State Capitol Building, Salt Lake City, Utah, 84114, this 13 day of April, 1984.